

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

ABRA F. NEWMAN,)	
)	
Plaintiff,)	Civil Action No. 7:02CV01024
)	
v.)	<u>MEMORANDUM OPINION</u>
)	
WILLIAM N. ALEXANDER II, et al.,)	By: Samuel G. Wilson,
)	Chief United States District Judge
Defendants.)	

Plaintiff Abra F. Newman, proceeding pro se, brings this action under 42 U.S.C. § 1983 for alleged constitutional violations arising out of her arrest and criminal prosecution for driving without a motor vehicle license and obstruction of justice. The matter is before the court on Newman's Motion For Certificate Of Probable Cause For Appeal, Motion For Leave To Proceed in Forma Pauperis, Motion for Rehearing and Reconsideration, Motion to Compel and/or for Sanctions, Motion to Stay Proceedings and Second Motion for Leave to File Second Amended Complaint. For the reasons stated, Newman's motions are denied.

I.

On September 12, 2000, William Bowen and Jonathan Delp, both Virginia State Troopers, stopped Newman's car at a traffic checkpoint in Franklin County, Virginia. At the time, Newman did not have a driver's license and was driving a car that was not registered in her name. Virginia v. Newman, No. 01 01 4379 (Va. Cir. Ct. August 28, 2001) (conviction order). Newman refused to give her name or any form of identification and refused to get out of her car.

Newman was arrested and charged with operating a motor vehicle without a valid driver's license and also with obstruction of justice. On August 16, 2001, Newman's case was tried to a jury in Franklin County Circuit Court. The jury found Newman guilty of both charges. Newman was

fined \$1300 and was ordered to pay an additional \$2075 in court costs.

Newman appealed her conviction to the Court of Appeals of Virginia and the Supreme Court of Virginia. Both courts refused her appeal. Newman then filed a writ of certiorari in the Supreme Court of the United States. The Supreme Court denied her writ. Newman v. Virginia, 123 Sup. Ct. 1294 (2003).

In addition to appealing her criminal conviction, Newman brought this civil rights complaint under 42 U.S.C. § 1983 against various state officers involved with her arrest and criminal prosecution, including two state court judges, two state prosecutors, two state police troopers and the Franklin County Sheriff's Office. Newman claims that her arrest and the search of the car she was driving was unconstitutional, and that the judges, prosecutors and police officers are part of an institutional conspiracy to deprive her of her constitutional rights.

The defendants each filed motions to dismiss. Newman was present at the only hearing the court held in this case, and she responded to every pleading and document submitted by the defendants. On April 1, 2003, the court dismissed Newman's claims against the judges, prosecutors and the sheriff's department because they lacked merit based on the evidence of record. The court also dismissed all but one of the claims against the two state police officers. The court took under advisement the officer's motion to dismiss Newman's excessive force claim, and gave the parties an opportunity to submit evidence relating to that claim and to the defense of qualified immunity. The court's opinion and order was not a final judgment and cannot be appealed unless the court certifies it for appeal under Federal Rule of Civil Procedure 54(b). United States for use of Hudson v. Peerless Ins. Co., 347 F.3d 942, 944 (1967); Fed. R. Civ. P. 54(b).

Nevertheless, after the court's order was entered, Newman filed a notice of appeal to the

United States Court of Appeals for the Fourth Circuit. Newman also filed a motion for certificate of probable cause to appeal and a motion to proceed in forma pauperis. Newman also filed several additional frivolous pleadings, including a motion to amend her complaint to add the Chief Justice of the Supreme Court of Virginia and the Commissioner of the Virginia Department of Motor Vehicles. The court will address each of Newman's motions in turn.

II.

After appealing the court's April 1, 2003 order, Newman filed a motion for certificate of probable cause to appeal and a motion to proceed in forma pauperis. The court's April 1, 2003 order is not a final judgment. See United States for use of Hudson v. Peerless Ins. Co., 347 F.3d 942, 944 (1967). Thus, the court finds that Newman's appeal of the court's order is an improper interlocutory appeal and denies her motion for certificate of probable cause and her motion to proceed in forma pauperis.

Newman also filed a motion for reconsideration of the court's April 1, 2003 order. After a thorough review of the record, the court finds that Newman's claims against the state judges, prosecutors and the sheriff's department are frivolous and denies her motion to reconsider. The court also finds that the unlawful search and seizure, cruel and unusual punishment, RICO, conspiracy and injunctive relief claims against the state police officers were properly dismissed and denies Newman's motion to reconsider dismissal of those claims as well.

Newman also filed a motion to compel discovery and/or for sanctions alleging that the defendants have failed to respond to Newman's discovery requests. The only claim remaining in this case is the excessive force claim against the two state police officers. Those two defendants have filed a motion to dismiss based on qualified immunity and the court has not yet ruled on that motion.

Until the issue of qualified immunity is resolved, discovery cannot be allowed. Jenkins v. Medford, 119 F.3d 1156, 1159 (4th Cir. 1997). Accordingly, Newman's Motion to Compel Discovery and/or for Sanctions is denied.

Newman also filed a motion to stay the proceedings in this case until the United States Court of Appeals for the Fourth Circuit rules on her appeal of the dismissal of her habeas corpus petition. The court dismissed Newman's habeas petition because Newman was not "in custody" as required under 28 U.S.C. § 2254. The outcome of Newman's appeal in the habeas action is unrelated to the current proceedings. Accordingly, the court denies Newman's motion to stay proceedings.

Finally, Newman filed a second motion for leave to amend her complaint, seeking to include four new parties in this action: the Chief Justice of the Supreme Court of Virginia; the Supreme Court of Virginia; the Commissioner of the Virginia Department of Motor Vehicles; and the Virginia Department of Motor Vehicles. The court finds that this motion is frivolous and denies the motion.

III.

For the reasons stated, Newman's Motion For Certificate Of Probable Cause For Appeal, Motion For Leave To Proceed in Forma Pauperis, Motion for Rehearing and Reconsideration, Motion to Compel and/or for Sanctions, Motion to Stay Proceedings and Second Motion for Leave to File Second Amended Complaint are denied. An appropriate order shall be entered this day.

ENTER: This May _____, 2003.

CHIEF UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

ABRA F. NEWMAN,)	
)	
Plaintiff,)	Civil Action No. 7:02CV01024
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v.)	<u>ORDER</u>
)	
WILLIAM N. ALEXANDER II, et al.,)	By: Samuel G. Wilson,
)	Chief United States District Judge
Defendants.)	

In accordance with the memorandum opinion entered this day, it is **ORDERED** and **ADJUDGED** that Plaintiff's Motion For Certificate Of Probable Cause For Appeal, Motion For Leave To Proceed in Forma Pauperis, Motion for Rehearing and Reconsideration, Motion to Compel and/or for Sanctions, Motion to Stay Proceedings and Second Motion for Leave to File Second Amended Complaint are **DENIED**.

ENTER: This May _____, 2003.

CHIEF UNITED STATES DISTRICT JUDGE